IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4292 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEETA VIDYA MANDIR TRUST THORGH MANAGING TRUSTEE - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR HJ NANAVATI for Petitioner(s) : 1,
MS MANISHA LAVKUMAR, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
MR PREMAL R JOSHI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/11/2006

ORAL JUDGMENT

1. The petitioner trust is running a primary school at Anandpari-Navagam in Rajkot district. The

petitioner objects to the permission granted to respondent No.3 school to start a new primary school in the nearby vicinity. Primarily the case of the petitioner is that despite both schools being in close proximity NOC from the petitioner was not sought and without any NOC from the petitioner, the authorities have granted permission to respondent No.3 to start school which would have effect on the existing school of the petitioner. It is also contended that the school started by respondent No.3 was not in a proper building and was without proper facilities.

2. It is not in dispute that during the pendency of the petition, no stay was granted in favour of the petitioner. Therefore, the permission granted to respondent No.3 to start its primary school remained operative during the pendency of the petition. Presumably, respondent No.3 therefore, must have started its school and operated the same in the interregnum period. To reopen the issues regarding the question of grant of permission to respondent No.3 school at this stage would therefore

not be proper in the facts of the present case particularly when the stand of the Government authorities is that there is considerable distance between the locations of the two schools. However, exact distance between the two schools is not on record. Therefore, as per the rules, whether NOC was necessary or not cannot be decided. Secondly, several years have passed since the authorities permitted respondent No.3 to start its new school. Considering all these aspects of the matter, I find that instead of disturbing the permission granted to respondent No.3 to start school, ends of justice would be served if the Director of Primary Education is requested to take into account the existing situation and decide whether respondent No.4 can be permitted to continue to run the school. For that purpose, if the petitioner makes a representation within a period of two weeks from today, the same may be decided bearing in mind the observations made hereinabove after giving an opportunity to respondent No.3 to produce material in its possession. If the representation is made within the time so permitted, the same may be decided

expeditiously and preferably within a period of four months from the date of receipt of such representation.

3. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)